

Pension Benefit Guaranty Corporation

§ 4010.5

been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) Any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of ERISA or section 412(d) of the Code, totaling in excess of \$1 million and, as of the end of the plan year ending within the information year, any portion thereof is still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits.* (1) *General.* For purposes of the \$50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of ERISA and § 4006.4 of this chapter (without reference to the exemptions and special rules under § 4006.5 of this chapter).

(2) *Contributions.* For purposes of determining the value of a plan's unfunded vested benefits under paragraph (b)(1) of this section, contributions made after the end of the plan year ending within the filer's information year are taken into account for that plan year only to the extent that they are—

(i) Paid on or before the filing due date under § 4010.10(a) (without regard to the alternative due date under § 4010.10(b));

(ii) Attributable to that plan year for funding purposes under ERISA section 302(c)(1) and section 412(c)(10) of the Code; and

(iii) Discounted in accordance with § 4006.4(b)(2)(iv) if unfunded vested benefits are determined under § 4006.4(b) or in accordance with § 4006.4(c)(4) if unfunded vested benefits are determined under § 4006.4(c).

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a portion of a minimum funding waiver for a plan is considered outstanding unless—

(1) A credit balance exists in the funding standard account (described in section 302(b) of ERISA and section 412(b) of the Code) that is no less than the outstanding balance of all waivers for the plan;

(2) A waiver condition or contractual obligation requires that a credit balance as described in paragraph (c)(1) continue to be maintained as of the end of each plan year during the remainder of the statutory amortization period for the waiver; and

(3) No portion of any credit balance described in paragraph (c)(1) is used to make any required installment under section 302(e) of ERISA or section 412(m) of the Code for any plan year during the remainder of the statutory amortization period.

(d) *Exempt entities.* A person is an exempt entity if the person—

(1) Is not a contributing sponsor of a plan (other than an exempt plan);

(2) Has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the controlled group's revenue for the fiscal year(s) ending within the information year;

(3) Has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) \$5 million; and

(4) Has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) \$5 million.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005]

§ 4010.5 Information year.

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§ 4010.4), what information a filer must submit (§§ 4010.6–4010.9), whether a plan is an exempt plan (§ 4010.8(c)), and the due date for submitting the information (§ 4010.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year shall be the fiscal

year of the person. A filer is not required to change its fiscal year or the plan year of a plan, to report financial information for any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than an existing plan year.

(c) *Controlled group members with different fiscal years*—(1) *Use of calendar year.* If members of a controlled group (disregarding any exempt entity) report financial information on the basis of different fiscal years, the information year shall be the calendar year.

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 2004, and filer B's financial information with respect to its fiscal year ending September 30, 2004, must be submitted to the PBGC following the end of the 2004 calendar year (the calendar year in which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005]

§ 4010.6 Information to be filed.

(a) *General.* (1) *Current filers.* A filer must submit the information specified in § 4010.7 (identifying information), § 4010.8 (plan actuarial information) and § 4010.9 (financial information) with respect to each member of the filer's controlled group and each plan maintained by any member of the controlled group, and any other information relating to the information specified in §§ 4010.7 through 4010.9, as specified in the instructions on the PBGC's website.

(2) *Previous filers.* If a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on the PBGC's website, demonstrating why a filing is not required for the current information year.

(b) *Additional information.* By written notification, the PBGC may require any filer to submit additional actuarial

or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year (including information on exempt entities and exempt plans). The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

(c) *Previous submissions.* If any required information has been previously submitted to the PBGC, a filer may incorporate this information into the required submission by referring to the previous submission.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005]

§ 4010.7 Identifying information.

(a) *Filers.* Each filer is required to provide, in accordance with the instructions on the PBGC's website, the following identifying information with respect to each member of the controlled group (excluding exempt entities)—

(1) *Current members.* For an entity that is a member of the controlled group as of the end of the filer's information year—

(i) The name, address, and telephone number of the entity and the legal relationships with other members of the controlled group (for example, parent, subsidiary);

(ii) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the entity (or if there is no EIN for the entity, an explanation);

(iii) If the entity became a member of the controlled group during the information year, the date the entity became a member of the controlled group; and

(2) *Former members.* For any entity that ceased to be a member of the controlled group during the filer's information year, the date the entity ceased to be a member of the controlled group and the identifying information required by paragraph (a)(1) of this section as of the date immediately preceding the date the entity left the controlled group.